

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEREK CARDER, et al.,

Plaintiff,

vs.

CONTINENTAL AIRLINES, INC.,

Defendant.

CASE NO. 09cv1448 DMS (BLM)

**ORDER GRANTING EX PARTE  
APPLICATION EXTEND TIME  
TO ANSWER OR OTHERWISE  
RESPOND TO THE COMPLAINT  
PENDING DETERMINATION OF  
FORTHCOMING MOTION TO  
TRANSFER TO THE SOUTHERN  
DISTRICT OF TEXAS PURSUANT  
TO 28 U.S.C. § 1404**

Pending before the Court is Defendant's *ex parte* application to extend time to answer or otherwise respond to the complaint pending determination of a forthcoming motion to transfer to the Southern District of Texas, pursuant to 28 U.S.C. § 1404. (Doc. 6.) Defendant's deadline to answer or otherwise respond is due on July 28, 2009.

Defendant indicates that it will file the motion to transfer on or before August 4, 2009. It asks the Court to: (1) extend the time to respond for 30 days after the case is transferred, in the event the Court grants the forthcoming motion to transfer; or (2) extend the time to respond for 30 days after the motion is denied, if it is denied. In the alternative, it proposes two fixed dates: (1) a 120-day extension from July 28, 2009; or (2) a 30-day extension, in the event the Court declines to extend time to respond pending determination of the motion to transfer. It argues the extension is warranted given interests of judicial administration and because it requires additional time to investigate the Complaint.

1 Plaintiffs argue that Defendant has failed to show good cause for an extension, because “neither  
 2 the Federal Rules nor section 1404 of Title 28 of the United States Code discuss or even remotely  
 3 suggest that a motion to transfer warrants stalling the pending action.” (Oppo. at 4.) Moreover,  
 4 Plaintiffs argue that Defendant has not shown that it needs the additional time to complete its  
 5 investigation of the Complaint’s allegations.

6 The Court disagrees. “For the convenience of parties and witnesses, in the interest of justice,  
 7 a district court may transfer any civil action to any other district or division where it might have been  
 8 brought.” 28 U.S.C. § 1404(a). A transfer for “convenience” under § 1404(a) should be sought as  
 9 soon as the “inconvenience” becomes apparent, *SEC v. Savoy Industries, Inc.*, 587 F2d 1149, 1156  
 10 (DC Cir. 1978), and such a motion may be filed with or before the first responsive pleading, *Vaz*  
 11 *Borralho v. Keydril Co.*, 696 F.2d 379, 386 (5th Cir. 1983), *overruled on other grounds by In re Air*  
 12 *Crash Disaster near New Orleans*, 821 F.2d 1147, 1163 n.25 (5th Cir. 1987). “Making such a motion  
 13 at the inception of the action may save the court and the parties from expending time and resources  
 14 on a case which belongs in a different forum.” 17 Moore’s Federal Practice, § 111.17 (Matthew  
 15 Bender 3d ed. 2009). Defendant has shown good cause to extend its deadline to respond pending  
 16 determination of the forthcoming motion to transfer. The ex parte application is therefore granted.

17 Plaintiffs desire to prosecute this action in an expeditious and efficient manner. To that end,  
 18 Plaintiffs offered to stipulate to an extension of 15 days, which Defendant refused. This is a  
 19 reasonable period of time for Defendant to respond following resolution of its motion to transfer.

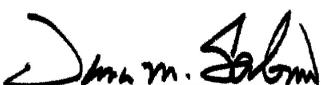
20 Accordingly,

21 1. Defendant shall file its motion to transfer pursuant to 28 U.S.C. § 1404(a) on or before  
 22 August 4, 2009;

23 2. Defendant’s answer or response to Plaintiffs’ Complaint shall be due 15 days following  
 24 entry on the docket of this Court’s order on the motion to transfer.

25 **IT IS SO ORDERED.**

26 DATED: July 23, 2009

27   
 28 HON. DANA M. SABRAW  
 United States District Judge